

OpE

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1 Practically speaking, we're barely
2 getting started until 2:30 any way, and by the
3 time we get --

4 THE COURT: All right. All right.
5 We'll do it Thursday.

6 MS. SCACCIA: Your Honor, how about
7 just to save further delay, I'll rest on the
8 record here and then I'll approach and I'll say
9 People rest.

10 (Whereupon, there was a pause in the
11 proceedings.)

12 MR. RICHMAN: Your Honor, I most
13 respectfully move for a directed verdict of the
14 Court based on the evidence in this particular
15 case. In fact, I would even go so far as based
16 upon the non-evidence in this case.

17 There's no indication whatsoever to
18 perceive that a crime was committed and the
19 defendant may have committed the crime.

20 Viewing the evidence most favorable to
21 the People, let's look at it entirely from their
22 point of view. What here in this case points in
23 any direction that the defendant, Anthony
24 Manganiello, shot and killed Mr. Acosta? What?

25 A mere fact that even circumstantially

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1 of such a tangential nature, they argued strongly
2 that he came out of the building in the
3 approximate time, heard a gunshot.
4

5 Then we heard from Mr. Ohle that Mr.
6 Cobb himself thought that the gunshot came from
7 outside, that's clear.
8

9 Now, then we have a situation where they
10 tried to argue and lean heavily on the fact that
11 how did he know that it was his partner that was
12 down there? Never went out over the air at any
13 time that it was a Parkchester police officer.
14

15 We know that that's not the truth,
16 because it came in on the tapes, you heard that.
17 You heard the situation that he talked about
18 Parkchester police officer.
19

20 You also see that which is marked
21 Defendant's A in evidence. The first thing says
22 "Security officer down. Shot in the head."
23

24 You also have the information from Mr.
25 Colon that he, who was dispatching for the
26 Parkchester police, say that there are other
27 officers with him. And we know that the other
28 officers were with him at the time the call was
29 made to 911. So the first persons who knew about
30 it were Parkchester police.
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1 One does not have to infer or argue,
2 that's what came out from the prosecution's case.
3 So how then is there any indication of criminal
4 action on the part of Mr. Manganiello? What here,
5 what one scintilla, what one thing that connects
6 him to this particular crime? A footprint,
7 fingerprint, a hair fiber, anything? Anything?

8 A fair appraisal of the facts here
9 clearly comes in the conclusion that there's
10 insufficient evidence to go to the jury and
11 consider the elements and all the facts in this
12 particular case.

13 Can you state, through any
14 preponderance of the evidence, that even, even a
15 mere preponderance of the evidence, that it was
16 this -- there's evidence here that Mr. Manganiello
17 did it? And the answer would have to come out no.

18 This is the strongest case I've ever
19 seen of non-guilt ever established in a
20 prosecution's case.

21 Forget about the negative inferences.
22 Forget about the evidence that's been lost. Don't
23 even mention that. That comes later on the
24 People's own case, that which they were willing
25 and able to introduce.

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JPM

1 There is nothing here to establish any
2 criminal conduct on the part of Mr. Manganiello.
3 Nothing. Where do we go with that? Can we trust
4 it to a jury? Can we trust this fact to a
5 particular case. I would submit that it would be
6 highly improper to do so.

7 MS. SCACCIA: Your Honor, I believe the
8 People have met their burden in putting a prima
9 facie case before this jury. I believe all
10 questions that remain are questions of fact for
11 which this jury should be able to decide.

12 THE COURT: The standard for viewing
13 circumstantial evidence cases is not whether there
14 is a preponderance of the evidence, it's not
15 whether there is proof beyond a reasonable doubt,
16 it's not whether -- it's not for me to take the
17 place of the jury in deciding whether the only
18 inference that can be drawn from the evidence is
19 the inference of guilt.

20 The standard is whether any valid line
21 of reasoning and permissible inferences can lead
22 rational persons to the conclusion reached by the
23 fact finder on the basis of the evidence as trial
24 viewed in the light most favorable to the People.

25 And while you have arguments to present

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1 to the jury concerning the credibility, for
2 example, of Mr. Cobb concerning whether he heard
3 shots coming from inside or coming from outside,
4 while you have arguments to present to the jury
5 about whether or not they should believe the
6 testimony of the two witnesses who say that they
7 heard him solicit or were solicited by him for
8 where he could purchase a gun, while you have
9 arguments to present to the jury about whether he
10 had reason to know or to believe that the person
11 in the basement, the officer down was his partner,
12 while there are arguments about all of those
13 things, leaving the questions of credibility to
14 the jury and leaving to them the alternate
15 question of whether or not the only inference that
16 could be drawn from all this evidence is the
17 inference of guilt, I find that the evidence does
18 meet the standards set forth by the Court of
19 Appeals, that there is a valid line of reasoning.
20 The inferences that could lead a rational person
21 to the conclusion reached by the fact finder based
22 on the evidence viewed in light most favorable to
23 the People.

24 On that standard, I find that the motion
25 to dismiss is denied.